Three ministers and a funeral

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Former Attorney-General Tom Hughes QC reads the eulogy to Sir John Gorton at the former Prime Minister's memorial service. *Rick Stevens*

by Ian Hancock

Shortly after 3pm on Monday March 8, 1971, and without warning of his intentions, Malcolm Fraser delivered a letter to John Gorton's office announcing his resignation as Minister for Defence. He explained his action in a single sentence: "I regard your conduct as Prime Minister as one which indicates significant disloyalty to a senior minister." Fraser's resignation precipitated Gorton's downfall and his replacement by William McMahon who, in what John Howard later called "an act of malicious spite", sacked Tom Hughes as Attorney-General.

Fraser and the army had been briefing journalists over conflicting interpretations of the army's commitment to the "civic action" policy in South Vietnam. Fired by his habitual loyalty to the armed services, and seeking the army's version of events, Gorton met the army's Chief of the General Staff, Lieutenant General Sir Thomas Daly, for 15 minutes on March 1. Denials notwithstanding, a story circulated after this meeting that Daly had accused Fraser of being disloyal to the army and to its minister, Andrew Peacock. In his resignation speech of March 9, Fraser indicted Gorton's actions on two counts. First, he had violated the chain of command by directly consulting the army without reference to the minister for defence. Secondly, he had failed to "kill" a journalist's story about Fraser's alleged disloyalty to the army and to Peacock and, by not doing so, placed silence above loyalty to a senior colleague. He concluded by saying that Gorton was unfit to be Prime Minister. He offered three examples to support his general denunciation. Two involved the meeting with Daly. The third was of particular interest to Tom Hughes.

According to Fraser, Gorton had "a dangerous reluctance to consult cabinet, and an obstinate determination to get his own way". He cited as evidence Gorton's attempt to prevent a cabinet discussion of the proposed call-out of the Pacific Islands Regiment (PIR) in July 1970. Fraser said that the Prime Minister wanted the call-out to assist the civil power in dealing with unrest on the Gazelle Peninsula in New Britain. Fraser was asked as Minister for Defence to arrange the call-out in preparation for an order-in-council to be signed by the Governor-General Sir Paul Hasluck. Advised by his department and by Defence Committee officials that the necessary legal conditions had not been met, Fraser refused to act until cabinet had been consulted. But Gorton "resisted cabinet discussion from the outset". The Attorney-General subsequently flew to Port Moresby "and I [Fraser] received his advice". Cabinet met on Sunday July 19 and, with its authority, Fraser co-signed the call-out order.

Hughes knew that Fraser, by omission, had misrepresented the story. Clarrie Harders, the secretary of the Attorney-General's Department, and Hughes had been visiting departmental offices in the Northern Territory when, in Alice Springs on Friday July 17, the Attorney received an urgent message from his department requesting an immediate return to Canberra. Arriving at Fairbairn, he took a phone call from the Minister for Defence, who was attending a function in Tasmania. Fraser told Hughes about the Prime Minister's intentions regarding the call-out and spoke of his concern that Gorton proposed to act without prior cabinet approval. Hughes agreed that cabinet should first endorse an approach to the Governor-General, and said he would consult the law books to prepare advice on when a call-out in aid of the civil power was justifiable.

Prime Minister John Gorton addresses the media in 1968 after his party-room victory. *John O'Gready*

After examining the legal position, and reading the telexes from Port Moresby, Hughes concluded that, on the evidence available, a call-out could not be justified. He prepared a handwritten opinion, adding that it would be inappropriate to seek a call-out without cabinet approval. After delivering his findings to the Prime Minister, Hughes flew to Sydney to spend the weekend with his family. He was not surprised when "a very displeased" Gorton rang him while he was having dinner, and asked Hughes to be at the Lodge the next morning. Fraser telephoned soon after Gorton had done so, and asked if the "Boss" had called. Fraser and Hughes – who held the same views about due process – agreed to meet in Canberra over breakfast before proceeding to the Lodge.

Tamie Fraser prepared a meal while her husband, Hughes and a senior Defence official paced up and down the frost-covered lawn outside to plan their encounter with Gorton. Hughes suggested that he and Harders should fly to Port Moresby to gather more information in order to advise cabinet on the legally appropriate course. Fraser and Hughes took this idea to the Lodge where they met the Prime Minister, flanked by two Country Party ministers. Within the hour, Hughes and Harders were on an RAAF flight to Port Moresby. They went straight to the army barracks, had radio conversations with the authorities in Rabaul, and learnt that the Peninsula was on "the cusp of civil insurrection". Following intensive discussions with the Administrator, David Hay, and members of the territory's Executive Council, Hughes and Harders concluded that the legal requirements for a call-out had been satisfied: there was a real danger the police could not contain the expected violence.

The two men flew back to Canberra on Sunday morning. Hughes attended a hastily convened cabinet at the Lodge where he advised it would be proper to authorise a call-out. Cabinet approved, and Hughes accompanied Fraser and Gorton to Yarralumla where Hasluck and Fraser signed the Executive Council order.

For Hughes the matter rested there, until Fraser's resignation speech on March 9, 1971. To his astonishment, Fraser had made Gorton's conduct over the events of mid-1970 a centre-point of his attack on the Prime Minister (Fraser had called it "one example" of Gorton's "obstinate determination to get his own way"). For Hughes, what happened between 17 and 19 July amounted to "a strong-willed Prime Minister submitting to the advice of strongly minded ministers, namely, Fraser and myself, who had acted in unison". After Fraser had delivered his speech and Gorton had replied, Hughes fell in step with Fraser and Peacock in the government lobby and asked both men to come to his office. There he recounted his recollection of the events. Concluding, he asked Fraser if he had got anything wrong. Fraser said he had not. In that case, Hughes said, he could not understand why Fraser had made the events relating to the call-out a point of his attack on the Prime Minister. Fraser said nothing in response and the conversation ended.

Malcolm Fraser in October 1975. *Supplied*

Evidently, Fraser had either forgotten the full circumstances or preferred the simplicity of a tale about Gorton wanting to get his own way. A resignation speech would lose some of its punch if, in truth, Gorton did not get his own way because two ministers obliged him to observe due process – which he did.

Hughes admired and loved John Gorton, and saw him in hospital just before he died on Sunday May 19, 2002. Gorton recognised his friend and, for a brief moment, they held hands. Gorton was privately cremated and a state memorial service was arranged for Friday May 31 at St Andrew's Anglican Cathedral, Sydney. Hughes had earlier attended the condolence debate in the House of Representatives, after which he joined John Howard, members of Gorton's family and Ainsley Gotto in the Prime Minister's suite. Over lunch, they discussed the question of whether Malcolm Fraser would, or should, attend the memorial service, Gorton having refused to speak to him since March 1971. Wisely, the prevailing view was to let matters take their course.

Gorton wanted Hughes to deliver the eulogy, and his friend undertook "a very considerable preparation"; everything was "very carefully thought out". The text went through several drafts, each one a little more strongly worded. Hughes believed that Fraser's action in 1971, founded upon misrepresentation and poor judgment, should not be ignored or smothered by anodyne prose. Fraser knew what to expect, once he learnt that Hughes would deliver the eulogy. He, too, "was prepared". Others thought Hughes might have an additional or a different target. A Sydney barrister wrote to him three days before the service: "We Anglicans would not regard any 'accidental' derogatory remark about Sir William McMahon in our cathedral as a major sin!"

Some 400 people attended the service. Unquestionably, Tom Hughes' eulogy was the memorable event. Whitlam and Fraser sat with their wives in a fourth-row pew to hear Hughes speak of Gorton the private man, of his unconventional upbringing, of the fighter pilot and his ministerial career. Hughes captured Gorton's unique mixture of "the larrikin and the gentleman", his candour and magnetism, and his considerable intellectual capacity. He referred to Gorton's determination to be an agent of change in the machinery of government. There was a reminder of his eye for the talented misfit in the promotion of Bill Wentworth, whose "absolute disbelief in the virtues of tact" was one of many factors that had kept him on the outer in the Menzies and Holt years. Hughes also highlighted Gorton's individual stamp on Australia's defence and foreign policy and his firm belief that Australia was a single national entity for the purposes of economic management.

Tom Hughes QC and NSW premier Neville Wran. *Phillip Lock*

No one in the cathedral could reasonably call any of the above inappropriate. Everything changed when Hughes turned to the "political assassination" of March 1971.

"No treatment of the life of Sir John Gorton would be complete without some reference to the events surrounding his political demise as prime minister, and I realise that what I am about to say is said in the distinguished presence, amongst many others, of a former parliamentary colleague [Fraser]. But I have to speak the truth, and I will".

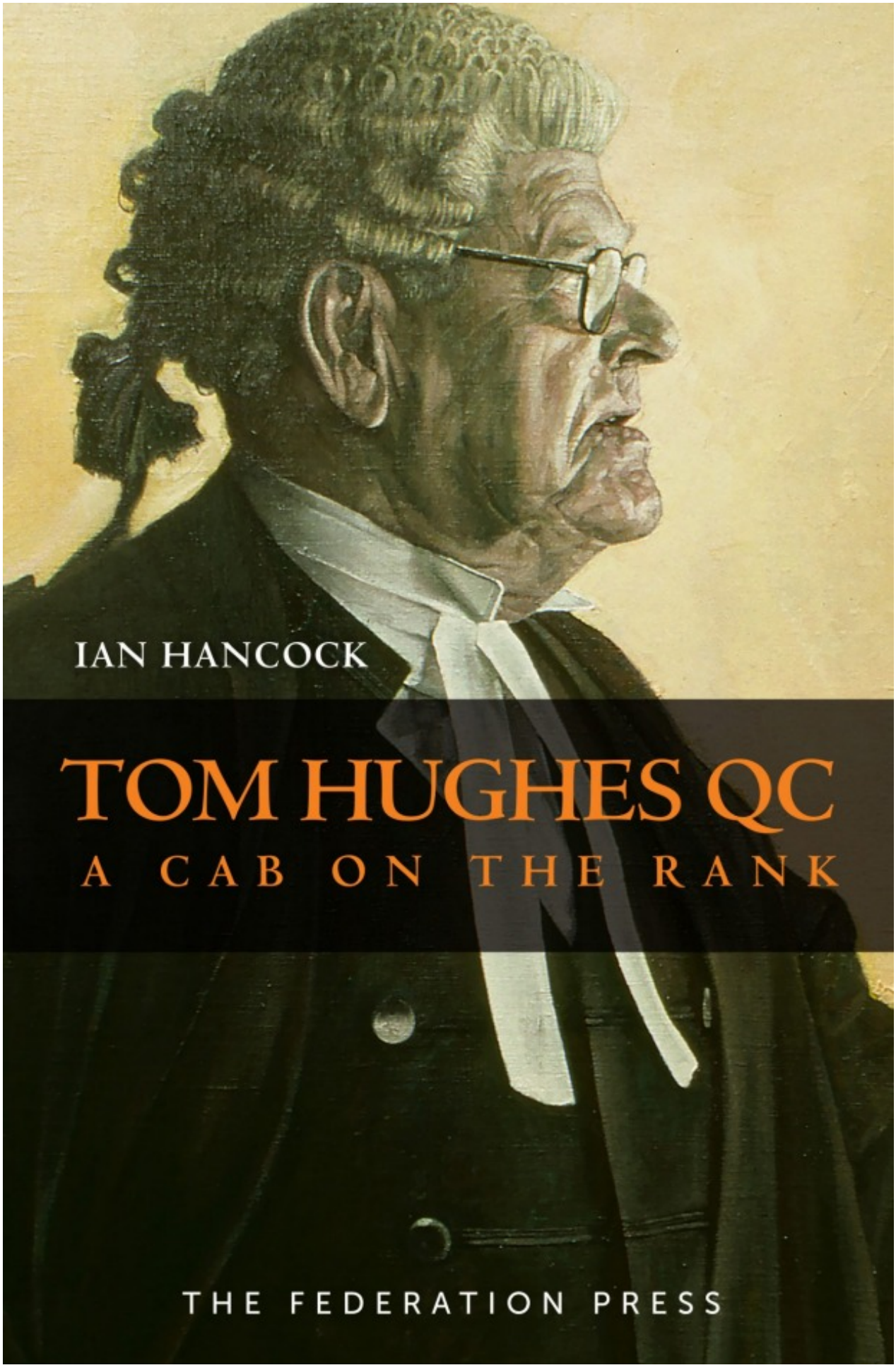
He said Fraser resigned "quite unnecessarily" because of Gorton's supposed disloyalty over dealings with a journalist and his alleged refusal to listen to ministers in making decisions. Hughes provided a shorthand version of the call-out of the PIR, and referred to his own successful association with Fraser to dissuade Gorton from taking unilateral action. He recalled Fraser's agreement, in Peacock's presence, with Hughes' recollection of events. Hughes observed that Gorton had intended no disloyalty, and in the House had complimented Fraser, who had just described him as unworthy to hold the high office of Prime Minister. As for the internal opposition, which seized upon Fraser's resignation to oust Gorton, their actions "resembled the downhill stampede as described in St Matthew's Gospel of the proverbial Gadarene swine". There was a final thrust: "History's judgment will be kinder [to Gorton] than it will be upon those who conspired to bring him down."

Outside the cathedral, and during the next few days, the chatter revolved around Hughes' eulogy. Whereas long-time Gorton supporters were mostly delighted, the journalist Alan Ramsey thought that funeral rites were "supposedly about resolution". He contrasted Hughes' "charmless, graceless eloquence", with Whitlam's compassion. Whitlam had touched Fraser on the shoulder and whispered words from St John's Gospel quoted in the service: "Let not your heart be troubled." Responding to Ramsey, Hughes explained that a eulogy "to have enduring value should include a truthful account of the main events in the life of the subject". He had to set the record straight or be "unfaithful to history". Hughes also said he had spoken only about Fraser's lack of judgment and his selective recollection; he had not attacked his character.

Tom Hughes QC in Canberra in 1984. *Bartho*

Ramsey had written that, by "dumping" on Fraser, Hughes had "squared the ledger" for his own "political assassination". Yet Hughes had long come to terms with his sacking. He regretted only the manner of his departure from politics and of being deprived of the opportunity to promote effective trade practices legislation and Commonwealth sovereignty over Australia's territorial sea. Otherwise, as he told a judge of the Western Australian Supreme Court in 2009, his sacking by McMahon "was a turning point for the better. I would never have been happy in, or supporting, a government led by Fraser". Besides, "it is really a badge of honour to have been dismissed by Australia's worst Prime Minister to date. Perhaps, however, the present incumbent [Kevin Rudd] will run him close".

The above is an edited extract from Tom Hughes, A Cab on the Rank, by Ian Hancock, published by Federation Press and being released on June 6.



A Cab on the Rank, by Ian Hancock. *Supplied*